

# PORT OF SEATTLE

P. O. BOX 1209 / SEATTLE, WASHINGTON 98111

August 12, 1975

RECEIVED  
FEDERAL MARITIME COMMISSION  
WASHINGTON, D.C. 20540  
AUG 15 1975

Mr. J. T. Clarkson  
Manager  
Harbor Island Plant  
Shell Oil Company  
P. O. Box 3947  
Seattle, Washington 98124

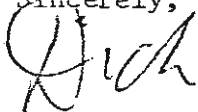
Dear Mr. Clarkson:

Enclosed is the executed copy of the Preferential Berthing Agreement between the Port of Seattle and Shell Oil Company for the use of terminal facilities at Terminals 18-20. We are also forwarding a copy of this agreement to the Federal Maritime Commission for their approval if necessary.

The Port remains concerned about securing the upland area as provided in our purchase agreement as amended. We would very much like to work closely with Shell to assure the earliest possible acquisition of the use of the property. To this end, I would like the appropriate representatives of Shell to meet in September with Mr. Glenn Lansing, Director of the Port's Real Estate Department. I am asking Mr. Lansing to call you in the next week or so to see if a mutually acceptable time and place can be agreed to for such a meeting.

I realize your matters in Renton remain unsettled but I would hope that such a meeting could at least explore the progress of that matter and perhaps even discuss possible alternatives if the Renton location cannot be obtained.

Sincerely,



Richard D. Ford  
Deputy General Manager

jmo

Enclosure

cc: Federal Maritime Commission  
Mr. William B. Rogers, Shell Oil Company, Houston, Texas

AGREEMENT FOR PREFERENTIAL RIGHT TO USE BERTHS

THIS IS AN AGREEMENT dated June 1, 1975 between the PORT OF SEATTLE, a Washington municipal corporation ("Port") with offices at \_\_\_\_\_ (P. O. Box 1209) in Seattle, Washington 98111, and SHELL OIL COMPANY, a Delaware corporation ("Shell") with offices at 2540 11th Avenue S.W. (P. O. Box 3947) in Seattle, Washington 98104.

1. PREFACE. This Agreement is that required by (and called "preferential assignment agreement" in) article 6(b) of the Purchase Agreement of February 1, 1973 between Shell and Port, as amended by the First Amendment to Purchase Agreement of November 12, 1974 between them ("Purchase Agreement"), pursuant to which Port is to acquire from Shell, on December 31, 1976, Terminal 19 on Harbor Island in Seattle, Washington, and under article 6(a) of which Port, meanwhile, is to install and maintain fuel lines through the Terminal 19 area, and pipes, valves and other appurtenances, necessary to enable loading and unloading of petroleum products into and from vessels, as well as fueling of ferries and other vessels, at adjacent Terminal 20 now owned by Port.

2. PREMISES.

2.1. Grant of Rights. Port hereby grants to Shell the right to use, preferentially, up to one thousand (1,000) lineal feet of ship berth at Port's Terminal 18, 19 or 20, fronting on the East Waterway, as shown on Port's Drawing No. 20-7501-M-1 (and adjacent areas) which is Exhibit A to this Agreement. Such berthing shall be so assigned as to permit efficient use of the riser systems. Both Port and Shell recognize that such use will require cooperation during the reconstruction of Terminal 19.

2.2. Adequacy of Terminal 19. If Port, after its acquisition of Terminal 19, reconstructs the same as recited in the Purchase Agreement's article 6(c), Terminal 19 as so reconstructed shall have risers, pipelines and other facilities adequate to enable Shell's full enjoyment of its preferential rights under article 2.1.

2.3. Definition. As used hereinafter, "Premises" means the ship berth space at Terminal 18, 19 or 20, which Shell has the preferential right to use under article 2.1.

3. TERM.

3.1. Definition. This Agreement shall be in effect for the period of one year commencing on the first day of the first calendar month after both of the following events have occurred:

(a) approval of this Agreement, if required, by the Federal Maritime Commission pursuant to Section 15, Shipping Act, 1916, as amended (which approval, if required, Port shall endeavor to obtain as promptly as possible, with Shell's cooperation in all reasonable ways requested by Port); and

(b) Port's completion of the installations required of it by the Purchase Agreement's article 6(a);

and shall continue in effect from year to year thereafter, but subject to termination as provided in article 3.2.

3.2. Termination. This Agreement may be terminated:

(a) by Port by giving Shell at least thirty days' prior notice, within thirty days after the expiration of any half-year period during which the aggregate quantity of petroleum products loaded or unloaded into or from vessels for Shell's account on the Premises, is less than 50,000 barrels; or

(b) by Shell, effective at the end of the first or any subsequent year, by giving Port at least thirty days' prior notice; or

(c) by either Port or Shell by giving the other at least thirty days' prior notice, within thirty days after the occurrence of any of the following events: (1) the Premises cease to be utilized as a public terminal, or (2) the Premises (including any facilities used in connection therewith) are substantially damaged or destroyed, or their operation or full utilization is prevented, suspended or impaired, by any circumstance reasonably beyond control, or by fire, explosion, strikes, lockouts or other labor disputes, riots or other civil disturbances, war or warlike operations, or laws, ordinances, regulations or orders of any governmental authority.

4. COMPENSATION. Shell shall compensate Port for Shell's uses of the Premises at Port's standard published tariff rates in effect at the time of each use, which rates may be amended by Port from time to time; but dockage shall not be assessed against ferries owned by the State of Washington.

5. USE OF PREMISES.

5.1. General. Shell may use the Premises for loading and unloading petroleum products into and from tankers, barges and other vessels (severally "Vessel"), and for fueling ferries owned by the State of Washington, and other vessels, but not for any other purpose without Port's prior written consent; and Shell shall never use the Premises for any unlawful purpose, or in any manner which interferes with navigation or commerce (including commercial fishery).

5.2. Non-exclusivity. Shell's rights to use the Premises under this Agreement are not sole or exclusive, but are only preferential to all other users thereof. Port reserves the right to grant other parties rights to use the Premises (including any facilities used in connection therewith), but shall exercise its best efforts to prevent interference with Shell's uses by such other parties' uses thereof or by other operations of facilities owned by Port.

6. NOTICES OF ARRIVALS. Shell shall give Port: (a) notice, as far in advance as practicable, of the expected time of arrival of each Vessel to use the Premises, as well as the estimated quantity of petroleum products to be loaded or unloaded into or from the Vessel, (b) notice confirming or changing the information in the first notice, at least three days before the Vessel's expected time of arrival, and (c) notice of every subsequent change of previously noticed information, promptly after the change becomes known to Shell. The first notice shall be written but may be given by regular mail; any subsequent notice may be oral and given by telephone; and every notice shall be directed to Port at its address first herein specified or at telephone No. 206-587-4910, to the attention (in either case) of Port's Manager, Marine Terminals, or of such other person as he may have designated by notice to Shell. Port's Manager, Marine Terminals (or his designatee) shall have the right to assign each Vessel to any berth available for Shell's preferential use, depending on the Terminals' operating requirements at the time.

7. LIABILITIES.

7.1. Indemnity. Shell shall defend and indemnify Port and its officers and employees against all claims, suits, liabilities, and expenses (including attorneys' fees) on account of injury or death of any person or damage of any property arising out of Shell's use of the Premises or any facilities in connection therewith, and not caused by any negligent act or omission of Port or of any third party who is not an employee of Shell or expressly authorized by Shell to be on or about the Premises; provided that Port: (a) shall give Shell prompt notice of each claim or suit which is or may be within this indemnity, without having made any admission of liability or suffered any judgment by default; (b) shall permit Shell to participate in the defense thereof with attorneys of its own selection; and (c) shall neither offer nor accept any settlement thereof without Shell's prior written consent.

7.2. Insurance. Shell (a) shall maintain comprehensive public liability insurance, naming Port as an insured, with maximum limits, for personal injury and death, of \$1,000,000 per person and \$2,500,000 per occurrence, and, for property damage, of \$2,000,000 per occurrence, and (b) shall furnish Port, on request, certificate by Shell's insurers that such insurance is in effect, and will not be cancelled without at least thirty days' prior written notice to Port.

8. COMPLIANCE. Shell shall always comply with all applicable laws, ordinances, regulations and orders of all governmental authorities (Federal, State and local) relating to Shell's operations in loading, unloading and other handling of petroleum products on the Premises, and shall make such tests and studies, install and operate such equipment, and take such other preventive measures as may be required by such laws, ordinances, regulations and orders relating to those operations.

9. GOVERNMENTAL CHARGES. Shell shall pay: (a) all taxes on the Premises, (b) all taxes (including ad valorem but excluding income taxes) on this Agreement or the interest in the Premises created by this Agreement, and/or measured by the compensation paid by Shell hereunder, and (c) all license, occupation and excise taxes and fees on or with respect to Shell's operations on the Premises. If any such tax or fee is paid by Port, Shell shall reimburse Port therefor within fifteen days after its receipt of Port's invoice accompanied by written evidence of Port's payment thereof.

10. SUCCESSION. Shell shall not transfer or encumber this Agreement or any of its rights hereunder, or sublease the Premises, without Port's prior written consent, except to any corporation which is controllingly owned by Shell, or which succeeds to all or substantially all of Shell's assets by merger, consolidation or conveyance. Any transfer, encumbrance or sublease tendered by Shell for Port's consent shall be evidenced by a duly-executed instrument in writing, which shall remain on file with the Port, and shall also be filed, if necessary, with the Federal Maritime Commission. Subject to the foregoing, this Agreement shall bind and benefit the successors and assigns of Port and Shell, respectively.

11. DEFAULT. If either Port or Shell defaults in performance of any of its obligations hereunder, and (a) fails to remedy the default within thirty working days after its receipt of notice thereof from the other, or (b) if the default cannot reasonably be remedied that quickly, fails to commence remedying the same within such thirty days, or fails thereafter diligently to prosecute the remedying thereof to completion, and (c) in either case, fails fully to indemnify the other against any actual damages resulting from the default: the other may terminate this Agreement by giving notice to the defaulter.

12. LAW-FORUM. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Washington; and the judicial and administrative bodies of that State shall be the fora for any legal proceedings arising under this Agreement.

13. NOTICES. Except where otherwise specified herein, every notice hereunder shall be given by certified or registered letter or telegram, and shall be deemed given when the letter is deposited in the U. S. mail or the telegram with the telegraph company, postage and/or charges fully prepaid, and directed to Port or Shell (as the case may be) at its address first herein specified, to the attention, if to Port, of its General Manager, or, if to Shell, of its Manager, Harbor Island Plant, or at such other address and/or to such other attention as it may have substituted therefor by at least fifteen days' prior notice so given to the other.

EXECUTED as of the date first herein specified.

ATTEST:

Kerry T. Simonson  
Secretary

PORT OF SEATTLE

By

Mark D. Adkins  
President

SHELL OIL COMPANY

ATTEST:

L.M. Wright  
Assistant Secretary

By

M. H. Brown  
General Manager Transportation and  
Distribution